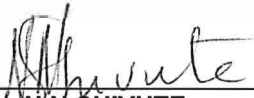


“Annexure 11”
IN THE HIGH COURT OF NAMIBIA

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|---|---|
| Case Title: <i>The State v Benedictus Isaaks</i> | Case No: CR 69/2018 High Court ref no.: 1041/2018 Magistrate's serial no.: 71/2018 Division of Court: High Court |
| Heard before: Honourable Mrs Justice Shivute et Honourable Mr Ndauendapo | Delivered on: 06 September 2018 |
| Neutral citation: <i>S v Isaaks</i> (CR 69/2018) [2018] NAHCMD 269 (06 September 2018) | |
| The order: <ol style="list-style-type: none"> a) The conviction as well as the sentence are set aside. b) The matter is remitted to the magistrate in terms of s 312 of Act 51 of 1977 in order for him to pose questions to the accused pertaining to his intention to cause grievous bodily harm. c) When sentencing the accused, the court should take into consideration the portion of the sentence the accused had already served. | |
| Reasons for order: | |
| Shivute J (Ndauendapo J concurring) <ol style="list-style-type: none"> 1. The accused was convicted of assault with intent to do grievous bodily harm read with the provisions of the Domestic Violence Act, 4 of 2003. 2. He was sentenced to 18 (eighteen) months imprisonment of which 6 (six) months are suspended for a period of 3 (three) years on condition that the accused is not convicted of assault with intent to cause grievous bodily harm committed during the period of suspension. 3. The matter was referred to me for purposes of review. After perusing the review record I raised a query with the learned magistrate how the court satisfied itself that the accused intended to do grievous bodily harm, if no question to establish intent to cause grievous bodily harm was posed. | |

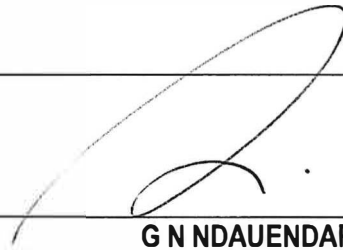
posed.

4. The learned magistrate conceded that she indeed failed to question the accused of his intention at the time of assaulting the complainant and asked the reviewing court to cure the defect in the proceedings of the court a quo.
5. All the elements of an assault (common) are incorporated in the crime of assault with intent to do grievous bodily harm namely:
 - (a) The application of force (or the inspiring of a belief that force is to be applied).
 - (b) Unlawfulness and
 - (c) Intention however, an additional intention to cause grievous bodily harm is another requirement. In other words there must be an additional intention to cause serious injury not just an intention to cause bodily harm.



N N SHIVUTE

JUDGE



G N NDAUENDAPO

JUDGE